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MICHAEL E. G. JR., CLERK

# In the Supreme Court of the United States

OCTOBER TERM, 1978

No. 77-1568

MISSOURI CHURCH OF SCIENTOLOGY,

*Appellant,*

vs.

STATE TAX COMMISSION OF MISSOURI, J. E. RINEY,  
DON G. WILLIAMS, ROBERT F. LOVE, Commissioners  
of the State Tax Commission of Missouri, JOHN K.  
TRAVERS, Collector of Revenue, City of St. Louis, and  
GLENN J. McBRADY, Assessor, City of St. Louis,

*Appellees.*

ON APPEAL FROM THE SUPREME COURT OF MISSOURI

## MOTION TO DISMISS OR AFFIRM

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ON APPEAL FROM THE SUPREME COURT OF MISSOURI

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**MOTION TO DISMISS OR AFFIRM**

Pursuant to Rule 16(1)(b) and (d) of the Rules of the Supreme Court of the United States, Appellees move this court to dismiss the appeal herein or, in the alternative, to summarily affirm the decision below, for the reasons and on the grounds hereinafter set forth.



### STATEMENT

This case is an appeal from a decision of the Supreme Court of Missouri, en banc, dated December 19, 1977, which denied Appellant's request for a tax exemption for certain tangible personal property it controlled on January 1, 1974. The decision in question is reported at *Missouri Church of Scientology v. State Tax Commission*, 560 S.W. 2d 837 (Mo. banc 1977).

For the tax year 1974, the Assessor for the City of St. Louis placed certain office equipment and furniture on the assessment rolls, assigning them an assessed value of \$5,000. Appellant contested this action on the grounds that the property was "actually and regularly used exclusively for religious worship" within the meaning of §137.100(5), RSMo Supp. 1975, V.A.M.S., and Article X, §6 of the Constitution of Missouri. Appellant pursued its administrative remedies and was granted a hearing by Appellee State Tax Commission of Missouri on October 8, 1974.

At that hearing, the sole witness testifying for Appellant with respect to the claimed religious exemption was Reverend Frederick M. Rock, a 26 year old minister with Appellant's organization. He testified as to the general practices, tenets and nature of the organization and opined that the items of personal property in question were used in the administration of the church. He described the Church of Scientology in terms of an applied religious philosophy which emphasized the individual and the spiritual nature of man. It was made clear during the hearing that membership in a recognized religion, such as the Catholic Church, does not preclude membership in the Church of Scientology. Twenty-two exhibits apparently

relating to the taxable status of Appellant as a religious organization were marked for identification but never offered into evidence. No other proof as to the purported religious nature of Appellant's organization was either offered or accepted into evidence by the Commission.

The Commission denied the exemption claimed by Appellant on essentially the following grounds included in its Findings of Facts and Conclusions of Law:

#### Findings of Fact

"13. We find the testimony of the Reverend Frederick M. Rock generally not to be credible and worthy of belief in particular in respect to his description and categorization of the activities of the organization, its alleged religious services, its financial structure and the nature of the so-called donations which are made to the organization.

"14. The Commission finds that there is no sufficient credible evidence presented by the appellant to satisfy the burden placed upon one claiming exemption from taxation.

#### Conclusions of Law

"4. As to claims for exemption from taxation the burden is on the owner claiming his property to be exempt to establish that his property falls within the exempted class. *National Cemetery Ass'n of Missouri v. Benson*, 344 Mo. 784, 129 S.W.2d 842 (1939).

"5. Exhibits which were marked and identified but which were never offered into evidence cannot be considered as such by this Commission in its capacity as trier of fact.

"7. It is concluded that with the lack of credibility found by this Commission in the testimony of the witness Rock and the lack of corroboration by any independent authority on contemporary religions that the property owner has not satisfied the burden placed upon him.

"9. The personal property of the appellant has not, therefore, been shown to be used exclusively for religious worship or charitable purposes and therefore cannot be exempted from ad valorem taxation." *Mo. Church of Scientology v. State Tax Commission, supra*, at 844-845.

Appellant petitioned the Circuit Court of St. Louis City to review the above decision of the Commission. The Circuit Court affirmed the Commission's decision on the ground that Appellant had failed to carry its burden of proving that the property was used *exclusively* for religious purposes. An appeal was taken to the Supreme Court of Missouri.

In the resulting *Scientology* opinion, cited above, the Missouri Supreme Court, in affirming the judgment of the Circuit Court, stated:

"Weighing the evidence in light of appellant's sole witness' want of credibility and against the substantial burden of proof required, we find the record supports the Commission findings." *Scientology, supra*, at 844.

This appeal followed.

## ARGUMENT

### I.

This Court should dismiss the instant appeal or summarily affirm the decision below because the decision of the Missouri Supreme Court rests on an adequate non-federal basis.

It is a well established principle that the United States Supreme Court will decline to review state court judgments which rest on independent and adequate state grounds, whether those grounds be procedural or substantive in character. *Henry v. State of Mississippi*, 379 U.S. 443, 446, 85 S.Ct. 564, 13 L.Ed.2d 408 (1965); *Fay v. Noia*, 372 U.S. 391, 428, 83 S.Ct. 822, 9 L.Ed.2d 837 (1963) and cases cited therein. Further, it is clear that the question of whether a party has produced sufficient evidence to make a case under state law is a non-federal matter. *American Radio Association v. Mobile Steamship Association, Inc.*, 419 U.S. 215, 231, 95 S.Ct. 409, 42 L.Ed.2d 399 (1974).

An examination of the decision of the Missouri Supreme Court in *Scientology, supra*, reveals that the decision is grounded on a non-federal basis, namely, the fact that the record in the case supported the Tax Commission's finding that Appellant had failed to carry the heavy burden of showing its entitlement to the tax exemption.

Article X, §6 of the Constitution of Missouri provides as follows:

"All property, real and personal, of the state, counties and other political subdivisions, and nonprofit cemeteries, shall be exempt from taxation; and all property, real and personal, not held for private or cor-



porate profit and used exclusively for religious worship, for schools and colleges, for purposes purely charitable, or for agricultural and horticultural societies may be exempted from taxation by general law. . . All laws exempting from taxation property other than the property enumerated in this article shall be void." (Emphasis supplied).

Based upon this constitutional provision the legislature did exempt all such property by enacting §137.100(5), RSMo Supp. 1975, which reads as follows:

"All property, real and personal, actually and regularly used exclusively for religious worship, or for purposes purely charitable and not held for private or corporate profit, except that the exemption herein granted does not include real property not actually used or occupied for the purpose of the organization but held or used as investment even though the income or rentals therefrom is used wholly for religious, educational or charitable purposes." (Emphasis supplied).

It is axiomatic under both state and federal law that claims for tax exemption are not favored. Accordingly, the burden has been placed upon the owner of the property to establish that his property falls within the exempted class. *City of St. Louis v. State Tax Commission*, 524 S.W.2d 839, 844 (Mo. 1974), citing *National Cemetery Association v. Benson*, 344 Mo. 784, 129 S.W.2d 842, 845 (1939). This is consistent with the general rule that there is a presumption recognized against exemption from taxation. 84 C.J.S., Taxation, §225, pp. 431-434 (1954).

A close reading of the *Scientology* decision indicates convincingly that the Court's decision rests on the failure of Appellant to present sufficient credible evidence to

justify the granting of the exemption. After recognizing the Commission's undoubted authority to judge the credibility of the witnesses before it, the Court went on to find that nothing in the record justified overturning the Commission finding that Rev. Rock's testimony was not credible. *Scientology, supra*, at 843-844. As previously noted, there was no evidence in the record which would have served to establish the religious character of Appellant's organization, save this discredited testimony. Documentary materials purporting to establish same were never introduced into evidence. *Scientology, supra*, at 839. In such circumstances, it was proper for the Court to conclude:

"Weighing the evidence in light of the appellant's sole witness' want of credibility and against the substantial burden of proof required, we find the record supports the Commission findings." *Scientology, supra*, at 844.

Contrary to Appellant's interpretation of the concurring opinion in *Scientology*, it is apparent that Judge Seiler, like the majority, recognized that the Appellant's failure of proof, standing alone, supported the denial of the exemption:

"As I understand the situation, the only evidence offered by appellant before the Commission was a witness whom the Commission found not credible with respect to his testimony bearing on the issues. We are not going to disturb that finding. *Beyond question, then, appellant has not carried the burden of establishing an exemption from taxation . . .*" *Scientology, supra*, at 845. (Emphasis supplied).

This analysis demonstrates that there was a completely independent and adequate non-constitutional basis for the

decision in question. The Court's pronouncement that the term "religious worship" contained in Article X, §6 and §137.100(5) minimally required a belief in a Supreme Being need not be reviewed because the decision did not turn on this point. In fact, Appellant argued to the court below that Scientology "acknowledges the existence of God and recognizes and espouses devotion to a Supreme Being." *Scientology, supra*, at 843. This indicates as a practical matter that the crux of the decision relates to the burden of proof generally rather than to the definitional standard to which that burden is directed. Furthermore, even if the decision had not discussed the nature of "religious worship" the result in the case would have been the same. There was simply no credible evidence presented as to the religious nature of Appellant. Inasmuch as the decision rests on an adequate state ground, this appeal should be dismissed for want of jurisdiction.

On a related point, Appellees contend that this appeal should be denied plenary consideration because, in light of the extreme deficiencies in the evidence presented to the Commission by Appellant, the record in this case fails to disclose the necessary facts for review. *Hughes v. Wendel County Treasurer*, 317 U.S. 134, 63 S.Ct. 432, 87 L.Ed. 139 (1942). In absence of Rev. Rock's testimony, which the Commission had full authority under state law to find noncredible [*Koplar v. State Tax Commission*, 321 S.W.2d 686, 694 (Mo. 1959)], there is a complete lack of evidence to afford a basis for determining the religious nature, *vel non*, of Appellant's organization.

In sum, it may be seen that Appellant's allegation that the *Scientology* decision rests on a finding that devotion to a Supreme Being is a prerequisite to a property tax exemption is unfounded. Even assuming for the sake of argument that the decision is ambiguous, a dismissal would still

be in order. See, *Simmons v. West Haven Housing Authority*, 399 U.S. 510, 511, 90 S.Ct. 1960, 26 L.Ed.2d 764 (1970); *Black v. Cutter Laboratories*, 351 U.S. 292, 299, 76 S.Ct. 824, 100 L.Ed. 1188 (1956). In such circumstances, this appeal should be dismissed.

## II.

**This Court should dismiss the instant appeal or summarily affirm the decision below because the appeal fails to present a substantial federal question.**

Plenary consideration of this appeal is unnecessary because the question presented is insubstantial. Appellant contends that the ruling below "violates the First Amendment because it not only establishes religions which believe in the worship of God, but it also prohibits the free exercise of those which do not." (Jurisdictional Statement, p. 8). The Supreme Court of Missouri in *Scientology* recognized the weakness of Appellant's First Amendment claims:

"Appellant contends that requiring devotion to worship of the Supreme Being as a sine qua non to classification as religion and entitlement to exemption from ad valorem taxation would be in direct contravention of the First Amendment citing *United States v. Seegar*, 380 U.S. 163 . . . *Torcaso v. Watkins*, 367 U.S. 488 . . . and *Everson v. Board of Education of the Township of Ewing*, 330 U.S. 1. . . . Appellant gives little explanation how these cases support its position and the cases do not justify the contention made. *Seegar* . . . involves an interpretation of the Selective Service Act, with its main thrust defining the statutory terms religious belief and Supreme Being. *Torcaso* does not define religion, holding only that a state may not require an oath declaring a belief in God as a prerequi-



site for holding public office but indicated nothing that would limit a legislative grant of tax exempt status to religious organizations. *Everson* dealt with the constitutionality of states (Maryland) providing bus service to parochial school students. It did not suggest principles pertinent to the issues here." *Scientology*, *supra*, 842-843, fn. 5.

Presented with such scant authority, the Missouri Supreme Court was clearly correct in denying Appellant's First Amendment contentions. The same result should obtain here.

Appellees submit that the definition of "religious worship" contained in the *Scientology* opinion is strictly based upon an interpretation of the Missouri Constitution and a statute enacted pursuant thereto, and that Appellant has in no substantial way shown how such interpretation is in contravention of the First Amendment. Therefore, this appeal should be dismissed for lack of a substantial federal question.

### CONCLUSION

For the foregoing reasons, Appellees move that this appeal be dismissed or, in the alternative, the decision below summarily affirmed.

Respectfully submitted,

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